IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No.266 of 2004
Date of decision:23.10.2006

Jai Kumar Jain

....Appellant

versus

Assistant Commissioner of Income Tax, INV, Circle, Patiala

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Salil Bali, Advocate, for the appellant.

JUDGMENT:

The assessee has preferred this appeal against order dated 31.7.2003 in IT(SS) A No.2/Chandi/96 passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'B', in respect of block period commencing 1986-87 to 1996-97, proposing following substantial questions of law:-

"i) Whether on the facts and circumstances of the case the Ld. ITAT was right in upholding the addition of Rs.53,609/- against the declared income of Rs.16000/- which was recorded income in the books of accounts and the date of filing of return of income was due after 31.3.1996?

ii) Whether the amounts of gifts received by the minor sons duly accounted for in the books amounting to Rs.88,840/- and where interest earned on the same was duly disclosed and assessed in Asstt. Years 1994-95 and 1995-96 in the hands of the applicant under section 64(1A) of Income tax Act, 1961 could still remain undisclosed as per the provisions of section 158B(b), if no then whether the addition, if any, could be made under section 143(3) under such circumstances and not under the provision of Chapter XIV-B?

Iii) Whether in the facts and circumstances of the case the Ld. ITAT was right in upholding the addition of Rs.70,000/- as undisclosed income despite the fact

that it was received as a gift from a known and genuine source and further this amount was duly recorded in the account books of the firm of the appellant and if any such addition was to be made the same should have been made under section 68 of the IT Act whereas it has been made under Section 69 of IT Act which are not interchargeable?

(iv) Whether in the facts and circumstances of the case the Ld. ITAT was right in upholding the addition of Rs.2,00,000/- as unexplained household expenses despite the fact that this addition was made without any material or evidence in hand?

(v) Whether in the facts and circumstances of the case, the Ld. ITAT was right in upholding the cash to the tune of Rs.13,845/- as unexplained cash found during the search operations despite the fact that it was properly explained by the appellant terming the same to be savings of his wife and children?"

At the time of hearing, learned counsel for the assessee made submissions only with reference to proposed questions (i) to (iii). We will, therefore, deal with the said submissions only.

Search was conducted at the residential premises of the assessee on 23.11.1995 under section 132(1) of the Income Tax Act, 1961 (for short, 'the Act'). Certain documents were seized. Notice dated 1.2.1996 under section 158BC of the Act was given to the assessee, requiring filing of return. The assessee filed return on 23.4.1996. The assessment was made which was challenged by the assessee.

Re:Q.No.(i)

The finding of the Tribunal on this question is as under:

"6. Now reverting to the facts of the instant case, we find that in this case a search was conducted on 23.11.95. From the expression 'Block Period' and 'the previous years' appearing in Section 158 B(a) the period mentioned in the word 'Block Period' means the period of 10 previous years relevant to 10 Ays preceding the previous year in which the search was conducted. The 'Previous Year' further includes the period in which the search was conducted upto the date of commencement of such search i.e. 23.11.95 in the instant case of the assessee. It further means that in the instant case of the

> assessee the AY ending upto 23.11.95 is thus included in the Block Period of the instant case of the assessee, as per section 158 BA(2), the total undisclosed income relating to the block period ending upto 23.11.95 is to be charged to tax at the specified rate of 60% as income of the block period, irrespective of the fact whether regular assessment for any one or more of the relevant Ays is pending or not. In the light of these provisions, as discussed here in above, the argument of the assessee's counsel, that the AO was not justified in taking the undisclosed income of the assessee for the period 1.4.95 till the date of search because the date of filing of the return of the income was due after 31.3.96, as well as, the alternate argument that even if this income was estimated for the said period it should be clubbed in the return to be filed for AY 1996-97 and the normal rate of tax should have been charged instead of 60% have no force and accordingly these arguments of the Ld. counsel for the assessee, having no force, are rejected and as a consequence of the same, the assessee having failed to explain with the documentary evidence as to why he declared the income at Rs. 16000/- for AY 1996-97 upto the date of search i.e. 23.11.95, when M/s Gian Agro in their P & L account has shown the net profit at Rs.53609/- we hold that the assessing authority was fully justified in taking the undisclosed income at Rs. 53609/- instead of Rs. 16000/-, as disclosed by the assessee, for the current ay 1996-97 as on 23.11.95. The order of AO, in this regard, is upheld and ground No.6 of the appeal of the assessee is rejected."

For above conclusion, the Tribunal relied upon judgment of the Gujarat High Court in **N.R.Paper and Board Limited and others v. Deputy Commissioner of Income Tax,** (1998) 234 ITR 733 and judgment of the Kerala High Court in **NT John v. CIT and another,** (1997) 228 ITR 314.

Learned counsel for the assessee relied upon judgment of the Bombay High Court in **CIT v. Vikram A.Doshi,** (2002) 256 ITR 129. In the said judgment, it was observed that transactions in question could not be held to be undisclosed transactions as the same were duly disclosed in the returns. In the present case, finding of the Tribunal reproduced above shows that though, in the P&L account, net profit of Rs.53,609/- was shown in the return income was shown only at Rs.16000/-. Remaining amount was, therefore, rightly taken to be as undisclosed income.

Admittedly, no contrary assessment had taken place in regular

assessment proceedings. There was, thus, no bar to take into account the said undisclosed income.

In view of the above, while endorsing the findings of the Tribunal on this issue, we do not find this to be a substantial question of law.

Re:Q.No.(ii) & (iii)

Finding of the Tribunal on these questions is as under:-

> "7.9. We have gone through the decision (Supra) and find that the facts of that case (supra) were not applicable because in that case even the dispute regarding the ownership of the gift amount was involved which is not in the instant case of the assessee. Further, in that case the interchargeability of and applicability of sections 69 & 69A was involved whereas in the instant case only the applicability of Sections 68 & 69, as well as, interchargeability of both these sections is involved. We are of the opinion that since the AO found this amount credited as having been received as gift in the bank pass book of the assessee which could not be termed as account books of the assessee. So, for the genuine gift, this amount could be added U/s 69 of the I.T. Act and has been rightly done so by the AO because in the account books of M/s Gian Agro, this amount has been simply credited as capital of the firm and not credited as having been received as gift amount nor any enquiry has been conducted in the AY by the AO during the course of regular assessment as to how this amount has been credited and from which source it has been credited by the assessee in the capital account of M/s Gian Agro. Otherwise too, we are of the opinion that even assuming that this amount was found credited in the account books of M/s Gian Agro of which the assessee was the proprietor, from that alleged gift amount received by the assessee, the same is also to be added as undisclosed income of the assessee u/s 68 on account of non-genuine gift which means that in the existing facts and circumstances, the impugned amount could be considered for addition either u/s 68 or u/s 69 because the only difference between section 68 and 69 is that in section 68 there should be a credit entry in the books of account of the assessee whereas in section 69 there should not be an entry in the books of account. In case of section 69, only where the investments have been made but have not been satisfactorily explained, the income should be taken as

> the income of the assessee. So, in the existing facts and circumstances, the addition could have been made but have not been satisfactorily explained, the income should be taken as the income of the assessee. So in the existing facts and circumstances, the addition could have been made under either of the sections 68 or 69 of the I.T. Act. In the light of above discussion, it would be futile and academic to discuss the alternate argument of Ld. DR for the revenue, based on the citation (supra) that the wrong mentioning or non mentioning of the sections in which the addition is made would not vitiate the liability of the assessee to pay the tax under I.T. Proceedings."

Question of genuineness of a gift has been gone into by this Court, inter-alia, in **Sh.Jaspal Singh v. CIT,** ITA No.256 of 2006, decided on 15.9.2006. It was observed:

> "It is well-settled that mere identification of donor and showing the movement of gift amount through banking channel is not enough to prove genuineness of the gift. The assessee was required to establish that the donor had the means and the gift was genuine, for natural love and affection. Reference in this regard may be made to the judgments of this Court in **Lal Chand Kalra v. CIT**, 22 CTR 135, judgment of Delhi High Court in **Sajan Dass and Sons v. CIT**, (2003) 264 ITR 435, **Commissioner of Income Tax, West Bengal II v. Durga Prasad More**, (1971) 82 ITR 540 and **Sumanti Dayal v. Commissioner of Income Tax**, (1995) 214 ITR 801.
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> The judgments relied upon by learned counsel for the assessee are distinguishable. In the said judgments, the Tribunal recorded a finding that the gifts were genuine which was held to be a pure finding of fact.
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> We have dealt with this aspect of the matter at length in our judgment dated 31.7.2006 in **Sh.Subhash Chander Sekhri v. DCIT Central-II, Jalandhar,** (ITA No.265 of 2006).
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> We are of the view that concurrent findings of fact recorded by the authorities that the gifts in question were not genuine, is pure finding of fact and no substantial question of law arises."

In view of the above, while endorsing the findings of the

Tribunal on these issues, we do not find these to be substantial questions of law.

In view of the above, the appeal filed by the assessee is dismissed.

(Adarsh Kumar Goel)
Judge

October 23, 2006
'gs'

(Rajesh Bindal)
Judge